

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: BRIAN J. CRISTOFONO,

BKY No. 20-40994

Adv. No. 20-4094

Debtor.

ANETA LENNARTSON and TOP LAW, PLLC,

No. 20-1943

Plaintiffs-Appellants,

v.

**ORDER DENYING APPELLANTS'
MOTION FOR LEAVE TO APPEAL**

BRIAN J. CRISTOFONO,

Defendant-Appellee.

Jeremy J. Cobb, **COBB CHAUCER PLLC**, 400 South Fourth Street, Suite 401-232, Minneapolis, MN 55415, for plaintiffs-appellants.

Nathan M. Hansen, 2440 North Charles Street, Suite 242, North St. Paul, MN 55109, for defendant-appellee.

Appellants filed a Complaint in an adversary proceeding in bankruptcy court. (Mot. Leave Appeal, Ex. 5 (“Adversary Docket”) No. 1, Sept. 14, 2020, [Docket No. 1-5](#).) Appellee filed an Answer in response. (Adversary [Docket No. 6](#).) Appellants then moved the bankruptcy court to compel Appellee to replead and to strike his affirmative defense, arguing that the Answer did not comply with [Federal Rule of Civil Procedure 8](#). (Adversary [Docket No. 9](#); see Transcript at 4, Oct. 2, 2020, [Docket No. 3](#).) The bankruptcy court

denied the motion, finding Appellee's Answer to be fairly typical and thus satisfactory. (Mot. Leave Appeal, Ex. 7, Sept. 14, 2020, [Docket No. 1-7](#); Transcript at 8.) Appellants now move the Court for leave to file an interlocutory appeal of the bankruptcy court's decision. (Mot. Leave Appeal, Sept. 14, 2020, [Docket No. 1](#).)

Under [28 U.S.C. § 158\(a\)\(3\)](#), the Court has discretionary appellate jurisdiction over an interlocutory order of a bankruptcy court, *In re M & S Grading, Inc.*, [526 F.3d 363, 368, 371](#) (8th Cir. 2008), which the Court should only exercise in exceptional circumstances, *see In re Hecker*, No. 10-1904, [2010 WL 1875553](#), at *5 (D. Minn. May 10, 2010). In determining whether to grant leave to appeal, the Court applies the standard found in [28 U.S.C. § 1292\(b\)](#), which requires that (1) the order involves a controlling question of law, (2) to which there is a substantial ground for difference of opinion, and (3) upon which a decision will materially advance the outcome of the litigation. *See In re SRC Holding Corp.*, No. 05-2768, [2006 WL 5939396](#), at *1 (D. Minn. Feb. 7, 2006).

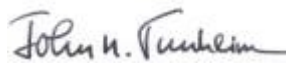
Here, Appellants challenge the bankruptcy court's order regarding the sufficiency of Appellee's responsive pleading, but this order does not involve a controlling question of law that would either end the litigation or substantially reshape its future. *See Nat'l Union Fire Ins. Co. of Pittsburgh v. Donaldson Co.*, No. 10-4948, [2015 WL 4898662](#), at *2 (D. Minn. Aug. 17, 2015). Furthermore, given that Appellants would not likely prevail on appeal, *see* 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1261 (3d ed.) ("[I]t usually is not productive to try and police the pleadings by motion[.]"),

granting leave to appeal would unnecessarily prolong the litigation, *see In re RFC & RESCAP Liquidating Tr. Litig.*, No. 13-3451, [2016 WL 3410332](#), at *4 (D. Minn. June 20, 2016). Accordingly, the Court will deny Appellants' Motion for Leave to Appeal.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Appellants' Motion for Leave to Appeal [[Docket No. 1](#)] is **DENIED**.

DATED: November 4, 2020



at Minneapolis, Minnesota.

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JOHN R. TUNHEIM
Chief Judge
United States District Court